



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

January 25, 2012  
SPR11/370

Mr. Tom Zuppa  
*The Sun*  
491 Dutton Street  
Lowell, MA 01854

Dear Mr. Zuppa:

I have received your petition appealing the response of the Town of Groton (Town) to *The Sun's* December 14, 2011 public records request. Specifically, *The Sun* requested the internal affairs files for two former police officers.

On January 12, 2012, you informed this office that satisfactory records were provided to you.

Given that the Town has made the responsive records available, accordingly, I will consider this appeal closed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn Williams".

Shawn A. Williams  
Assistant Director

cc: Mr. Mark W. Haddad



## **The Commonwealth of Massachusetts**

**William Francis Galvin, Secretary of the Commonwealth**  
**Public Records Division**

January 12, 2012  
**SPR11/371**

Mr. John Taylor  
88 Endicott St., Apt. #2  
Boston, MA 02113

Dear Mr. Taylor:

This office has received your petition appealing the response of the Board of Bar Examiners (Board) to your November 8, 2011 public records request. Specifically, you requested copies of all documents used by the Board in grading the "Essay Portion" of the July 2011 Bar Examination.

The Office of the Supervisor of Records is statutorily empowered with the authority to determine the public record status of government records. G. L. c. 66, § 10. "Public records" is broadly defined to include all documentary materials or data, regardless of physical form, made or received by any officer or employee of any department of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26). In examining this definition, and the separation of powers doctrine, the Supreme Judicial Court has concluded that the Public Records Law does not apply to records of the judiciary. Ann K. Lambert v. Executive Director of the Judicial Nominating Council, 425 Mass. 406, 409 (1997); see also Mass. Const. Pt. 1, Art. 30 (separation of powers).

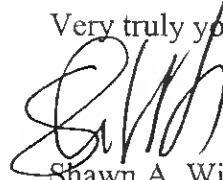
In a December 21, 2011 letter, Ms. Marilyn J. Wellington, Executive Director to the Board, informed you that the Board is an entity within the judicial branch of government. Consistent with this claim, in the Appropriations Act for Fiscal Year 2012, the Legislature lists the Board as being within the judicial branch. Acts of 2011, Chap. 68, Sec. 2.

Mr. John Taylor  
Page Two  
January 12, 2012

SPR11/371

Accordingly, as I am unable to assist you in this matter, I must consider this administrative appeal closed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SAW', is written over the typed name.

Shawn A. Williams  
Assistant Director

cc: Ms. Marilyn J. Wellington



## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

April 24, 2012  
SPR11/372

Mr. Timothy P. Bragan  
Town Administrator  
Town of Harvard  
13 Ayer Road  
Harvard, MA 01451

Dear Mr. Bragan:

I have received a petition from Ms. Deborah Skauen-Hinchliffe appealing the response of Mr. Peter Jackson, Co-Chairperson of the Town of Harvard's Municipal Building Committee (Town) to her December 20, 2011 request for public records. See G. L. c. 66, § 10(b); see also 950 CMR 32.08(2) (explaining appeals process). Specifically, Ms. Skauen-Hinchliffe requested an electronic copy of all records of communication, including emails, between Mr. Jackson and the firm, Lerner, Ladds and Bartels (LLB Architects) from October 15-December 16, 2011.

"Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26). The statutory exemptions are strictly and narrowly construed. Globe Newspaper Co. v. Dist. Att'y for the Middle Dist., 439 Mass. 374, 380 (2003); Att'y Gen. v. Ass't Comm'r of the Real Prop. Dep't of Boston, 380 Mass. 623, 625 (1980).

Given that the ability to inspect the records of government is fundamental to our democracy, there is a presumption that all governmental records are public records. Disclosure of governmental records is favored by the presumption that the record sought is public. G. L. c. 66, § 10(c); 950 C.M.R. 32.08(4). See The Harvard Crimson, Inc. v. President & Fellows of Harvard College; Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 436 (1983).

Moreover, this office believes that all records made or received by a governmental body, officer or employee of the Commonwealth are public records, subject to redaction, and that the records must be disclosed upon request. G. L. c. 66, § 10(a); see also In re Subpoena Duces Tecum, 445 Mass. 685, 687 n.3 (2006).

In a December 20, 2011 email, Mr. Jackson informed Ms. Skauen-Hinchliffe that the only records responsive to her request are email records, all of which had been printed and ready for her to either pick up at the Town Hall or would be mailed to her attention. It is my understanding that Mr. Jackson had previously emailed some of the responsive email records that had

accompanying attachments. Ms. Skauen-Hinchliffe's request indicates that she wanted the Town to provide all the records in the native electronic format, and that she would like the Town to forward those records to her via email.

In a January 17, 2012 discussion with Lori Sullivan, an attorney in the Public Records Division, Mr. Jackson stated that he provided Ms. Skauen-Hinchliffe with records in paper form, because he believed that doing so was in compliance with the Public Records Law.

The definition of "public records" applies to all records regardless of physical form or characteristics. See G. L. c. 4, § 7(26). This office previously opined that limiting the public's rights of access to only paper records at a time when the government is using a more efficient means of reviewing information is an effective denial of this right to meaningful access. See SPR Bulletin No. 3-96 (June 6, 1996). Moreover, a recent court decision suggests that records should be provided in native format if so requested. See Dahl v. Bain Capital Partners, LLC, 655 F. Supp. 2d 146 (2009).

Mr. Jackson expressed his concern to Attorney Sullivan that providing electronic copies of the emails would allow distribution to others without request or control, and that the email addresses of the individuals copied on the original emails would be exposed. While this office shares a strong interest in ensuring the accurate maintenance of public records, the fear of record manipulation is not an adequate or sufficient excuse to deny access to records in electronic form. Whereas email records are electronic in nature, the Town must provide those records in an electronic format.

Attorney Sullivan advised Mr. Jackson that if the Town is planning to redact (segregate) the email addresses that are listed on the records, the Town must specifically claim one of the enumerated exemptions in the Public Records Law to withhold the addresses. Record custodians have superior knowledge of their records, and therefore record custodians have the burden of properly claiming any exemptions that may apply.

Lastly, Ms. Skauen-Hinchliffe asked that the records be forwarded to her via email. While the email records must be provided in an electronic format, under the Public Records Law the custodian is not required to forward records via email to the requester. If the Town wishes to provide the records via email, the Town may do so; however the records could also be provided on a disk or other portable storage media.

#### **Fee for copies of paper records**

In her petition, Ms. Skauen-Hinchliffe informed this office that the Town is charging twenty-five cents per page for 8 ½ x 11 copies of records. Please be advised that in accordance with the Public Records Access Regulations (Regulations), paper copies of records are twenty cents (\$.20) per page, not twenty-five cents (\$.25). See 950 C.M.R. 32.06.

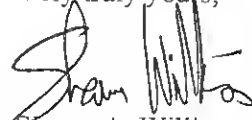
Accordingly, the Town is ordered to provide Ms. Skauen-Hinchliffe with the responsive email records in electronic format. If the Town is planning to charge Ms. Skauen-Hinchliffe for the

Mr. Timothy P. Bragan  
Page Three  
April 24, 2012

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cost of providing her with the email records on portable storage media, then she must be provided with a written, good faith estimate within ten (10) days. Once the Town receives the estimate funds from Ms. Skauen-Hinchliffe she must be provided with the records. Failure to comply with this administrative order within ten (10) days may result in Ms. Skauen-Hinchliffe filing a complaint with the Superior Court for enforcement.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn Williams", with a stylized flourish at the end.

Shawn A. Williams  
Acting Supervisor of Records

cc: Mr. Peter Jackson  
Ms. Deborah Skauen-Hinchliffe



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

March 8, 2012  
SPR11/373

S. Howey  
P. O. Box 870037  
Milton Village, MA 02187-0037

Dear S. Howey:

This office has received your appeal regarding the response of Mr. Sean Erickson for the Department of Public Health (Department), to your November 13, 2011 request for public records. See G. L. c. 66, § 10(b); see also 950 C.M.R. 32.08(2). Specifically, you requested copies of all contracts and grants executed in 2011 and 2012 between Planned Parenthood League of Massachusetts and the Department.

In a December 5, 2011 letter to you, the Department provided a fee estimate of the expected cost to be incurred in complying with your request. In the letter, the Department stated that certain responsive information will be withheld pursuant to Exemptions (a) and (c) of the Public Records Law. In your December 22, 2011 appeal letter to this office, you appealed the calculation of the fee estimate provided by the Department.

In a February 22, 2012 telephone conversation with Donald White, an attorney in this office, the Department's Deputy General Counsel Peggy Wiesenbergs stated that the two hourly rates used in the Department's fee estimate were those of the lowest paid employees capable of performing the required tasks. The fee estimate associated with the search time required to locate responsive records was calculated at an hourly rate of \$22.97/hour, the rate of the lowest paid clerical staff employee capable of performing this task. The copying of responsive records was also calculated at the hourly rate of the clerical staff employee.

The fee estimate associated with the review of responsive records and redaction of certain information was calculated at the hourly rate of \$34.19, the rate of the lowest paid program staff employee capable of performing this task. According to Attorney Wiesenbergs, the program staff employee is most capable of performing this task because of a unique familiarity with the responsive contracts and any potentially exempt information that may be included

S. Howey  
Page Two  
March 8, 2012

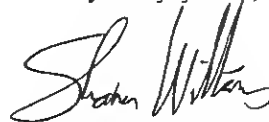
SPR11/373

within the records. As stated by Attorney Wiesenberg, the clerical staff employee is not familiar with the responsive records and is not considered capable of conducting a full review of these records. Accordingly, the Department used the hourly rate of the program staff employee to calculate this part of the fee estimate.

It is the finding of this office that the Department has satisfied its burden of providing a written, good faith estimate of the total cost to be incurred prior to complying with your public records request. See 950 C.M.R. 32.06. The Department sufficiently provided supporting information to this office with respect to the hourly rates used to calculate the fee estimate provided to you. However, the Department is encouraged to modify the format of subsequent fee estimate calculations in order to avoid misinterpretation. In the fee estimate provided to you, the Department incorrectly indicated that the program staff employee was responsible for conducting the search for responsive records while the clerical staff employee was responsible for redacting the records. This information was clarified only after further discussion between Attorney White and Attorney Wiesenberg.

Whereas the Department has provided a good faith estimate in response to you request for public records, I will consider this appeal closed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn Williams", written in a cursive style.

Shawn A. Williams  
Assistant Director

cc: Ms. Peggy Wiesenberg, Esq.





## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

May 9, 2012  
SPR11/374

Mr. Robert Seed  
Vice President  
Clinton Teachers Association  
100 West Boylston Street  
Clinton, MA 01510

Dear Mr. Seed:

I have received your petition appealing the non-response of the Clinton Public Schools (Schools) to your November 7, 2011 request for public records. See G. L. c. 66, § 10(b); see also 950 CMR 32.08(2) (appeals process). Specifically, you requested the complete financial records for the Schools for the fiscal years of 2009, 2010 and 2011.

After this appeal was opened, Lori Sullivan, an attorney in the Public Records Division contacted you to ask whether you had received all the financial records. On February 23, 2012, you informed Attorney Sullivan that you received records but not in the detail that you had hoped. At that time, Attorney Sullivan asked you to clarify your request for "financial records" so that she could continue to work with Mr. Terrance Ingano, Superintendent of Schools in providing you with all the records that would be responsive to your request.

It is my understanding that on May 7, 2012, you informed Attorney Sullivan, that you had received the financial records that you were seeking, and informed her that should you need any additional information from the Schools, you would contact Superintendent Ingano directly.

Accordingly, whereas the Schools have provided you with all the records responsive to your November 7, 2011 request, your administrative appeal is closed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn Williams", written over a horizontal line.

Shawn A. Williams  
Acting Supervisor of Records

cc: Superintendent Terrance Ingano



## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

August 8, 2012  
SPR11/375

Ms. Michele E. Randazzo, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
Boston, MA 02110

Dear Attorney Randazzo:

I have received a petition from Ms. Cynthia Simison, Managing Editor of *The Republican* appealing the December 14, 2011 response of the Town of Brimfield (Town) Board of Selectmen (Board) to a December 7, 2011 public records request. See G. L. c. 66, § 10(b); see also 950 CMR 32.08(2) (explaining appeals process). Specifically, *The Republican* requested:

1. Minutes of the Board's November 14, 2011 executive session meeting,
2. Reason given at the open meeting session for the Board to go into executive session,
3. Vote by the Board to go into executive session,
4. Notice by the Board to Mr. Steven Denning informing him of the executive session, and
5. A record of each Board member's vote in the executive session, which resulted in Mr. Denning non-reappointment to his position as the Town's Five Chief.

"Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

The statutory exemptions are strictly and narrowly construed. Globe Newspaper Co. v. Dist. Att'y for the Middle Dist., 439 Mass. 374, 380 (2003); Att'y Gen. v. Ass't Comm'r of the Real Prop. Dep't of Boston, 380 Mass. 623, 625 (1980). It is the burden of the record custodian to demonstrate the application of an exemption in order to

withhold a requested record. G. L. c. 66, § 10(c); see also District Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian must offer specific proof that an exemption applies).

In a December 14, 2011 letter, Ms. Diane Panaccione, Board member and Personnel Officer for the Town informed Ms. Lori Stabile, the Palmer Bureau Chief for *The Republican* that the Board was withholding all requested records pursuant to Exemptions (a) and (c) of the Public Records Law. G. L. c. 4, § 7 (26) (a), (c); G. L. c. 30A, § 21(a)(1). On June 13, 2012, on behalf of the Town, you informed Ms. Lori Sullivan, an attorney in the Public Records Division that the Town believes that the Open Meeting Law as it operates through Exemption (a) of the Public Records Law would no longer serve as a basis for withholding the records of the executive session. G. L. c. 30A, § 21(a)(1).

#### **Exemption (c) – Privacy Clause**

In a April 17, 2012 letter and in discussions with this office, you stated that while the Town is withdrawing its Exemption (a) claim, the notice to Mr. Denning concerning the executive session meeting, the executive session minutes and the votes taken by the Board members during executive session concerning the issue of Mr. Denning's re-appointment as Fire Chief are still being withheld pursuant to the privacy clause of Exemption (c) of the Public Records Law. Exemption (c) permits withholding of:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

G. L. c. 4, § 7(26)(c).

Exemption (c) contains two distinct and independent clauses, each requiring its own analysis. Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-34 (1983). Only the second clause of Exemption (c), the privacy clause is applicable to this determination. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Real Property Dep't, 380 Mass. at 625; Torres v. Attorney General, 391 Mass. 1, 9 (1984). Therefore, determinations must be made on a case by case basis.

The second clause only protects intimate details of a highly personal nature. Real Property Dep't, 380 Mass. at 625; see also Georgiou v. Comm'r of the Dep't of Industrial

Accidents, 67 Mass. App. Ct. 428, 432 (2006). Marital status, legitimacy of children, paternity, medical condition, governmental assistance, family disputes and *reputation* are some examples of the type of information that the second clause is designed to protect. See Real Property Dep't, 380 Mass. at 626 n.2 (*emphasis added*).

Application of the privacy exemption requires a balancing between any claimed invasion of privacy and the *public's interest* in disclosure. In re Subpoena Duces Tecum, 445 Mass. 685, 688 (2006) (*emphasis added*). Where the public interest in acquiring information significantly outweighs the seriousness of any invasion of privacy, the private interest in precluding disclosure must yield to the public interest. Id.

You informed this office that the Board's discussion did not involve issues related to the professional competency of the former Fire Chief, but instead involved a discussion concerning highly personal and private information. Moreover, you posit that if the information is released it would subject the individual to public embarrassment and possible damage to his personal and professional reputation. The test of whether the information rises to the level of an unwarranted invasion of privacy rests on whether disclosure of the information would embarrass an individual of normal sensitivities and whether that individual would find the information offensive.

Accordingly, it is the finding of this office that the Town is permitted to redact from the responsive executive session minutes portions of the text that are exempt pursuant to the second clause of Exemption (c) of the Public Records Law.

It is my understanding that the Town has no minutes of the November 14, 2011 open meeting session, and that the only meeting minutes that exist are for the executive session of the Board held on that day. Therefore, the Town has no record responsive to Ms. Simison's request number 1. You assured Attorney Sullivan that the Town will provide a copy of the redacted open meeting minutes in order to comply with Ms. Simison's requests number 2 and 3 for the reason given by the Board to go into executive session, and the votes taken by the Board members to go into executive session.

With respect to Ms. Simison's requests number 4 and 5, I find that the second clause of Exemption (c) will not apply to withhold either the communication that was sent to Mr. Denning notifying him of the executive session, or the votes taken by the Board members at the executive session on whether to re-appoint Mr. Denning to the position of Fire Chief. If, however, the notice to Mr. Denning contains any references to the specific personal issues discussed in executive session, the notice may be redacted to remove those references pursuant to the second clause of Exemption (c).

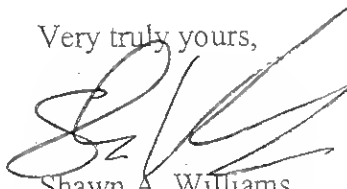
Ms. Michele E. Randazzo, Esq.  
Page Four  
August 8, 2012

SPR11/375

Accordingly, the Town is hereby ordered to provide Ms. Simison with a copy of the redacted executive session minutes showing the date, the names of the individuals present at the executive session, the reason for convening an executive session, the vote to go into executive session, and the vote taken by the individual Board members on whether to re-appoint Mr. Denning, or provide this office with a more comprehensive response to support the Town's exemption claims. The Town is further ordered to provide Ms. Simison with a copy of the notice sent to Mr. Denning from the Town redacted in a form consistent with this determination. Ms. Simison must be provided with these records within (10) days.

If the Town intends to charge Ms. Simison for the cost of complying with her request, she must be provided with a written, good faith estimate. Once the Town receives the estimate funds, the records must be provided to Ms. Simison. Failure to comply with this administrative order may result in Ms. Simison filing an action in Superior Court for enforcement of this determination.

Very truly yours,



Shawn A. Williams  
Supervisor of Records

cc: Ms. Cynthia Simison



## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

May 25, 2012  
SPR11/376

Mr. Scott L. Adkins, Esq.  
Menzer & Hill, P.A.  
2200 N. W. Corporate Blvd., Suite 406  
Boca Raton, FL 33431

Dear Attorney Adkins:

I have received your petition appealing the response of the Securities Division of the Secretary of the Commonwealth of Massachusetts (Division) to your request for public records. G. L. c. 66 § 10(b); see also 950 C.M.R. 32.08(2). Specifically, you requested copies of records related to a matter involving Securities America, Docket No. 2009-0085. Mr. Gregory Polen, an attorney for the Division, denied your request, citing both Exemption (f) of the Public Records Law, as well as a section of the Code of Massachusetts Regulations (Regulation). G. L. c. 4, § 7 (26) (f); 950 C.M.R. 14.413. Both Exemption (f) and the Regulation permit the Division to withhold investigatory materials from disclosure so long as such disclosure would harm investigative efforts.

In a recent telephone conversation, Attorney Polen explained that the parties associated with this matter are subject to a consent order, and the conditions of the order have not yet met with full compliance. Attorney Polen further explained that the investigation is considered open until such compliance obligations are met. Accordingly, whereas I find that the Division has met its burden in withholding the responsive records, I will consider this administrative appeal closed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn A. Williams".

Shawn A. Williams  
Supervisor of Records

cc: Mr. Gregory Polen, Esq.



## **The Commonwealth of Massachusetts**

William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

April 30, 2012  
SPR11/377

Mr. David Manjarrez  
47 Firecut Lane  
Sudbury, MA 01776

Dear Mr. Manjarrez:

This office has received your appeal regarding the response of Ms. Camie Lamica, SFO, Director of Business and Operations for Minuteman Regional Vocational Technical School District (School), to your October 20, 2011 request for public records. See G. L. c. 66, § 10(b); see also 950 C.M.R. 32.08(2). Specifically, you requested a copy of the DESE 2011 End of Year Report, and copies of all rental payment records for a School owned property located at 10 Mill Street in Lexington, for the period of April 2009 through the request date.

In your December 12, 2011 email appeal to this office, you objected to the School's policy of requiring requesters to submit a form in requesting copies of public records. While records custodians are encouraged to establish procedures to ensure a timely response to requests for public records, the School may not require you or any other requester to submit a form in order to obtain public records. The School is advised to review *A Guide to the Massachusetts Public Records Law* for further clarification, a copy of which will be provided to the School with this letter.

In a February 12, 2012 email to Mr. Donald White, an attorney in this office, you stated that you have received a copy of the DESE 2011 End of Year Report responsive to the first part of your request. You stated that this record was not obtained from the School but as a result of additional efforts on your part. The School did not provide you with a response to this part of your request. The School is reminded that a records custodian must provide an exemption or exemptions upon which a denial of records is based when records are not provided in response to a public records request. See 950 C.M.R. 32.08(1).

In a November 15, 2011 email to you, Ms. Lamica provided copies of responsive revolving account rental payment records generated from the School's financial system for fiscal years 2009-2012. In a March 5, 2012 telephone conversation with Attorney White, Ms. Lamica

stated that the School has provided you with all responsive records available from the financial system for the Mill Street property. In an April 5, 2012 email to Attorney White, Ms. Lamica confirmed that the responsive records provided to you were generated directly from the School's financial software system transaction inquiry screen. These records reflect all financial activity stored within the School's financial system relating to the Mill Street property for fiscal years 2009-2012. This office will rely on Ms. Lamica's representation that all responsive records from the financial system have been provided to you. See Konover Mgt. Corp. v. Planning Bd. of Auburn, 32 Mass. App. Ct. 319, 326 (1992) (the strong presumption that a public official will perform honestly and impartially and will properly discharge the duties of his office in the public interest).

In her March 5, 2012 telephone conversation with Attorney White, Ms. Lamica stated that the School would provide you with copies of checks submitted for rental payment to this account for the period of April 2011 through the present. In an April 5, 2012 email to Attorney White, Ms. Lamica stated that the School has retained copies of the front side only of these checks and has provided copies of these records to you. Ms. Lamica further stated that the School does not retain copies of the back side of these checks because they are blank at the time the School holds these checks, which is prior to submitting for deposit within the School's bank account.

In an April 13, 2012 telephone conversation with Attorney White, Ms. Lamica clarified that prior to October 2011 (not April 2011 as previously stated by Ms. Lamica); the School did not retain copies of checks submitted for payments made to the School. The School subsequently provided you with copies of checks submitted for payment for the period of October 2011 through the present. As a result, the School holds no additional records which are responsive to your request.

In her April 5, 2012 email to Attorney White, Ms. Lamica stated that the School has reviewed the *Massachusetts Municipal Records Retention Manual* and has not found a record series specific to the retention of cancelled checks submitted by other parties to the School. This office has also conducted a review of the *manual* and concurs that it does not expressly address the retention requirements of this specific record type. Despite this uncertainty, the School has implemented a procedural change in which it now retains copies of checks submitted for payment.

In your appeal, you requested that the School "recreate the missing file with cancelled rental payment checks" to be obtained from the private bank account of the individual who submitted payment to the School. It is the finding of this office that the School is not required to create a record in response to your public records request. See G.L. c. 4, § 7(26) (defining "public records" as materials which have already been "made or received" by a public entity).



Mr. David Manjarrez  
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April 30, 2012

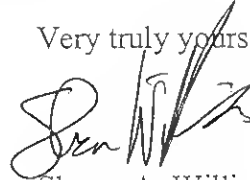
SPR11/377

Furthermore, once the School has deposited a rental payment check, the cancelled check returns to the custody of the individual who submitted payment and is no longer a record within the custody of the School.

In an April 6, 2012 email to Attorney White, you expressed a concern that Ms. Lamica has not made any demands that payment be made for contractual rental increases that may be in effect for the Mill Street property. Please be advised that this office has no authority to provide a determination as to the enforcement status of the rental increases.

It is the finding of this office that the School has provided all records responsive to your request. Accordingly, I will consider this appeal closed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Shawn Williams', with a stylized flourish at the end.

Shawn A. Williams  
Acting Supervisor of Records

cc: Ms. Camie Lamica



## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

May 25, 2012  
SPR11/378

Mr. Evan Lips  
*The Lowell Sun*  
491 Dutton Street  
P.O. Box 1477  
Lowell, MA 01853

Dear Mr. Lips:

This office has received your appeal regarding the response of Ms. Rosann DiPietro, Esq., Counsel for the Billerica Public Schools (School), to your December 1, 2011 request for public records. See G. L. c. 66, § 10(b); see also 950 C.M.R. 32.08(2). Specifically, you requested copies of all letters written by Billerica High School Principal Mr. Kevin Soraghan that were addressed to parents and members of the girls volleyball teams regarding any incidents that took place during the months of October and November 2011.

“Public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, created or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

A record custodian must demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(c); see also *District Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995).

### Exemption (a)

In a December 9, 2011 email response to you, Attorney DiPietro stated that responsive records were being withheld pursuant to Exemption (a) of the Public Records Law. The exemption applies to records:

specifically or by necessary implication exempted from disclosure by statute.

G. L. c. 4, § 7(26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested information where the exempting statute states or necessarily implies that the public's right to inspect records under the Public Records Law is restricted. See Attorney General v. Collector of Lynn, 377 Mass. 151, 154 (1979); see also Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

In the December 9, 2011 email, Attorney DiPietro stated that the School has withheld responsive records pursuant to the following as they operate under Exemption (a) of the Public Records Law: Massachusetts Student Record Regulations, 603 C.M.R. 23.07; the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; Massachusetts General Laws, Chapter 71, Section 37O.

In a February 16, 2012 telephone conversation with Donald White, an attorney in this office, Attorney DiPietro stated that the School has withheld one responsive record. The responsive record relates to the School's investigation of a potential bullying incident that occurred among members of the girls volleyball team. The School conducted an investigation into the incident, which resulted in a finding that the incident did not meet the standards that constitute bullying activities.

The results of the investigation were communicated by Principal Soraghan in a November 10, 2011 letter to parents of the girls volleyball team members. This letter constitutes the responsive record that has been withheld by the School. On March 8, 2012, Attorney DiPietro provided a copy of the responsive record pursuant to a request from this office to conduct an *in camera* inspection. See 950 C.M.R. 32.08(6).

Each school district is required to develop, adhere to and update a plan to address bullying prevention and intervention. See G.L. c. 71, § 37O. Each plan shall include, among other requirements, "*procedures consistent with state and federal law for promptly notifying the parents or guardians of a victim and a perpetrator, provided, further, that the parents or guardians of a victim shall also be notified of the action taken to prevent any further acts of bullying or retaliation*". Id.

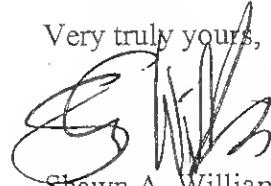
By implication, the statute limits access to the School's notification letter regarding the alleged bullying incident. The School is expressly required to notify the parents or guardians of students involved in alleged bullying or retaliation activities. The plan developed by each school district does not require any further notification nor does it provide any additional right of access to non-parents or non-guardians. Accordingly, it is the finding of this office that the School may permissibly withhold the responsive notification letter pursuant to G.L. c. 71, § 37O as it operates under Exemption (a) of the Public Records Law.

Mr. Evan Lips  
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May 25, 2012

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Whereas it is the finding of this office that the School may permissibly withhold the responsive record pursuant to Chapter 71, an analysis with respect to the applicability of FERPA or the Massachusetts Student Records Regulations is not required. Accordingly, I will consider this appeal closed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Williams', written over the closing 'yours,'.

Shawn A. Williams  
Supervisor of Records

cc: Ms. Rosann DiPietro, Esq.



## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

April 24, 2012  
SPR11/379

Ms. Andrea Merritt  
Construction Journal  
400 SW 7th Street  
Stuart, FL 34994

Dear Ms. Merritt:

I have received your petition appealing the response of the Division of Capital Asset Management (DCAM) to your December 15 and 19, 2011 requests for public records. See G. L. c. 66, § 10(b); see also 950 CMR 32.08(2) (explaining appeals process). Specifically, you requested the names of the bidders who were awarded contracts on ten (10) construction projects.

By letter dated December 27, 2011 the Office of the General Counsel at DCAM provided you with a written, good faith estimate for the costs of searching for and copying the responsive bid sheets, and the costs for providing you with the copies. It is my understanding that DCAM is charging you two hours at the lowest paid clerical position in the office, and for copies of records at twenty cents per page for a total of \$53.80. See G. L. c. 66, § 10(a); (custodian shall provide copies of public records upon payment of a reasonable fee); see also 950 C.M.R. 32.06(2) (custodian shall provide a written, good faith estimate when the cost of compliance is expected to exceed ten dollars (\$10.00)).

Please note that while DCAM provided you with similar information in September 2011, and waived the fees, a custodian may charge for complying with a public records request. See 950 C.M.R. 32.06. Moreover, DCAM does not have a separate log or list of each project with the winning bidder on paper or in electronic form. In complying with your previous requests in 2011, Peter Wilson, Deputy General Counsel of DCAM, informed Lori Sullivan, an attorney in the Public Records Division that DCAM had specially created a list of the bidders who were awarded contracts so that the list (with only the names) could be emailed to you as you requested. A records custodian is also not required to create a record in order to comply with a public records request.

With regard to this current appeal, Attorney Sullivan had discussions in February and March 2012 with Attorney Wilson and Ms. Cynthia Casimiro. In those discussions, Attorney Sullivan learned that DCAM does not have the information that you requested in an electronic format. In order to provide you with the individuals or companies that won a particular bidding process for each of the ten (10) construction projects, a search of paper records must be conducted to isolate the records, and then the particular bid sheet that corresponds with the bidder who was awarded the projects has to be copied.

Ms. Andrea Merritt  
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April 24, 2012

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Whereas, I find that DCAM's good faith estimate is reasonable, accordingly your appeal is closed. Once you provide DCAM with the estimate funds, DCAM will mail the records to your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn Williams", with a stylized flourish at the end.

Shawn A. Williams  
Acting Supervisor of Records

cc: Mr. Peter Wilson, Esq.  
Ms. Cynthia Casimiro